

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-CR-69

v.

ROLAND J. FLATH,

Defendant.

ORDER ON PENDING MOTION TO SUPPRESS

On August 18, 2011, the government filed three new declarations in response to the defendant's motion to suppress. In total, the government has now submitted five declarations in support of its response to the defendant's motion to suppress: the declaration of Baltazar Garcia (Docket # 22-1); the declaration of Paul Trachtenberg (Docket # 22-2); the declaration of James Moreira (Docket # 36-1); the declaration of Constable Ek (Docket # 36-2); and the declaration of Lucas Moh (Docket # 36-3). The government further indicates that it is in the midst of obtaining one additional supplemental declaration. (Docket # 36 at 2.)

In light of the three new declarations filed, the Court wants to give the parties the opportunity to clarify the facts still in dispute. To be clear, the Court does not invite new arguments, motions, or briefs. Rather, the parties are ordered to meet and confer to determine specifically which, if any, facts contained in the five declarations are in dispute. The parties should discuss whether: (1) based on the three new declarations submitted by the government on August 18, 2011, the defendant's July 22, 2011 letter request for an extension

of time to file a final list of stipulated and disputed material facts is now moot; (2) whether the five declarations may serve as a factual basis for the Court to resolve the motion to suppress; (3) whether the parties may now be able to prepare a separate stipulation as to the relevant facts; and (4) which specific relevant facts from the five declarations are in dispute.

After meeting, the parties shall submit the following by **September 2, 2011**:

1. Factual stipulations, if any are reached;
2. From the defendant, a list of specific disputed material facts warranting an evidentiary hearing;
3. If the government maintains that a hearing is not warranted, a letter stating the reasons why; and
4. A statement on whether the July 22, 2011 requested extension is now moot.

With respect to any disputed facts, the parties are reminded that evidentiary hearings are warranted only when the defendant's allegations are definite, non-conjectural, and detailed enough to enable the court to conclude that a substantial claim is presented and that there are disputed issues of material fact that will affect the outcome of the motion. *United States v. Coleman*, 149 F.3d 674, 677 (7th Cir. 1998) (*citing United States v. Rollins*, 862 F.2d 1282 (7th Cir. 1988)).

Dated at Milwaukee, Wisconsin this 19th day of August, 2011.

BY THE COURT

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge